

SOAH DOCKET NO. 458-03-2823

TEXAS ALCOHOLIC BEVERAGE COMMISSION, and	§	BEFORE THE STATE OFFICE
	§	
	§	
VELETTA FORSYTHE LILL, DALLAS CITY COUNCILWOMAN, ROSWELL COURT NEIGHBORHOOD ASSOCIATION, and THE OAK LAWN COMMITTEE	§	
	§	OF
	§	
v.	§	
	§	
ORION 3 L.L.C. d/b/a LIME BAR (TABC CASE NO. 603715)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Orion 3 L.L.C. d/b/a Lime Bar (Orion 3) has applied to the Texas Alcoholic Beverage Commission (Commission) for a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit, and a Beverage Cartage Permit for a premises known as Lime Bar, located at 4006 Cedar Springs, Dallas, Dallas County, Texas. Numerous citizens filed protests to the issuance of the permits based on general welfare, health, peace, moral, and safety concerns. The Commission's staff (Staff) remained neutral on the application.

After considering the arguments and evidence presented by the parties, the Administrative Law Judge (ALJ) finds that there is an insufficient basis for denying the application and recommends that the permits be issued.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

This case initiated in September 2002, with Applicant's filing of the application for permits to be issued by the Commission. Shortly thereafter, in October 2002, numerous citizens and citizen groups filed protests with the Commission, objecting to the issuance of such permits. The Commission referred this matter to the State Office of Administrative Hearings (SOAH) on April 14, 2003. Upon receipt of the case, SOAH set this matter for hearing in accordance with the applicable statutory and regulatory deadlines. On May 1, 2003, a public hearing was convened in this matter in Dallas, Texas, before ALJ Robert Jones. Orion 3 was represented by Stephen Shaw and David Hill, attorneys. Staff was represented by Tim Griffith. Protestant Roswell Court Neighborhood Association (Roswell) appeared through its representative, Steve Check. Although they had previously filed protests, neither Veletta Forsythe Lill nor the Oak Lawn Committee appeared nor participated in the hearing. Staff represented that Ms. Lill had filed a letter prior to the hearing advising that she was withdrawing her protest. After the presentation of evidence and arguments, the hearing concluded. The record closed on May 8, 2003, after additional evidence was received. After the record closed, this matter was



reassigned to ALJ Craig R. Bennett, who has reviewed the entire file, listened to the record of the hearing, and reviewed all evidence in the record prior to the preparation of this proposal for decision.

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, those matters are set out in the findings of fact and conclusions of law without further discussion here.

II. DISCUSSION AND ANALYSIS

A. Background Facts

Orion 3 seeks permits from the Commission to operate a nightclub to be known as the Lime Bar, located on Cedar Springs Road in Dallas, Texas. A nightclub was operated at this location under the same name for some years prior to the filing of the current permit applications. Most recently, the club had been operated by Noor Brothers Nightclub, Inc. (Noor Brothers). During the operation by Noor Brothers, the club was repeatedly cited by the police for noise and disturbance violations. Also, the club was issued citations on June 17, July 18, and August 11, 2002, for operating a dance hall without a permit.¹ In December 2002, Noor Brothers voluntarily surrendered their permits to operate the club.

Prior to the voluntary surrender of the permits by Noor Brothers, Orion 3 submitted its permit requests to the Commission, seeking the necessary permits to allow it to operate the club. On the application, three named partners in Orion 3 were identified: Garry Dean Lyon, Sheila Gayle Hussein, and Barry Gene Lyon. Both Barry Lyon and Garry Lyon were involved in the management of the bar while it was owned by Noor Brothers. When some local citizens learned of Orion 3's permit requests, they protested, resulting in this proceeding. After the protests were initiated, but prior to the hearing, Barry Lyon and Garry Lyon withdrew their interest in Orion 3, resulting in Sheila Hussein being the sole owner of it.

B. Applicable Law

Roswell challenges the application on the basis of §§ 11.46(a)(8) and/or 101.62 of the Texas Alcoholic Beverage Code (Code). Section 11.46(a)(8) provides, among other things, that a permit may be denied if the Commission has reasonable grounds to believe and finds that "the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, peace, morals, and safety of the people and on the public sense of decency." Further, Section 101.62 provides, among other things, that a permittee is not allowed to produce, amplify, or project "music or other sound that is loud, vociferous, vulgar, indecent, lewd, or otherwise offensive to persons on or near the licensed premises."

¹ Noor Brothers had applied for, but had not been granted, a dance hall permit from the City of Dallas. Despite this, the bar apparently continued to allow dance hall activities, as evidenced by the numerous citations.

C. Arguments and Evidence

Ultimately, Roswell is the only protestant that participated in the hearing and that has maintained its protest against the issuance of the permits.

1. Roswell's Evidence and Arguments

Roswell opposes issuance of the permits because of its concerns that the bar will be operated in the same way it has in the past—with loud noise, disturbances, and police citations being a frequent occurrence. Roswell notes the large number of problems associated with the prior owners' operation of the bar and the large number of police calls to the area and citations issued as a result of activity at the bar in the last two years. Roswell expresses concerns that such activity may continue under the operation of the bar by Orion 3. Roswell presented the testimony of Steve Cheek in support of its position. His testimony is summarized below.

Steve Cheek

Mr. Cheek is the designated representative for Roswell. He lives in a small neighborhood located directly across an alley from the Lime Bar, and his house is approximately 75 feet from the bar. Mr. Cheek testified that there have been numerous problems in the last two years related to the Lime Bar. Mainly, the problems relate to excessive noise and disturbances at the bar. Further, he has had problems with trash and excessive foot traffic resulting from the bar. Mr. Cheek discussed numerous citations given to the Lime Bar and/or its managers or employees. He also discussed the fact that the City of Dallas obtained a temporary injunction in the summer of 2002 against the Lime Bar, preventing it from operating as a dance hall. Mr. Cheek testified that he personally went into the club after that and observed it in violation of the temporary injunction.

Mr. Cheek expressed concerns that the past problems with the Lime Bar will continue under its operation by Ms. Hussein. He stated that it was his understanding that Ms. Hussein was involved in the management of the Lime Bar when Garry Lyon and Barry Lyon were still seeking to be partial owners of the bar and were participating in the application process. Given this, he has reservations about how she intends to operate the bar. However, on cross-examination, Mr. Cheek admitted that much of his concern about the application related to the involvement of Garry Lyon and Barry Lyon, and that his level of concern about the application has been diminished now that they are no longer involved. He continued to express some concerns, but agreed that, if Ms. Hussein operates the club differently and the prior problems do not arise again, his concerns would be alleviated.

2. Staff's Evidence and Arguments

Staff takes no position on the application. However, Staff presented the testimony of one witness, Mr. James Molloy, to provide information related to the Commission's processing of the application and background information regarding the proposed bar. His testimony is summarized below.

James Molloy

Mr. Molloy is employed as an agent for the Commission. As part of his employment for the Commission, Mr. Molloy investigates protests related to permits and permit applications. Mr. Molloy testified that he investigated protests related to the Lime Bar. Mr. Molloy testified as to the authenticity of the protests filed by citizens with the Commission. He also testified as to his investigation regarding the protests. He reviewed the history of police service calls for the location and also the reviewed zoning records and violations for the location. He determined that there were no zoning restrictions placed on the location other than in relation to dancing. The City of Dallas requires dance hall permits and there had been numerous citations in the past issued by the Dallas Police Department for violations of the dance hall restrictions because the location was not permitted as a dance hall.

In regard to police service calls, Mr. Molloy determined that there were a total of 60 calls to the police between October 2000 and October 2002 in relation to the location. The majority (31) of these calls related to noise or loud music complaints. Of those 31 calls for noise or disturbance, a majority were made by Steve Cheek, the representative of Roswell. The remaining calls related to a variety of complaints, involving burglar alarms, disturbances, or suspicious behavior.

Mr. Molloy further testified that Garry Lyon and Barry Lyon, two of the individuals originally listed as partners in Orion 3, previously worked for Noor Brothers at the Lime Bar. However, at the time of hearing, they no longer had an interest in Orion 3. On cross-examination, Mr. Molloy acknowledged that the Commission has determined that Orion 3 is a qualified applicant to hold the requested permits and that the location of the bar is properly zoned for the permits requested.

3. Orion 3's Evidence and Arguments

Orion 3 argues that the location of the proposed establishment is entirely appropriate and will not negatively impact the community. Further, Orion 3 asserts that the bar will be operated differently than it has under past ownership and that it will comply with all applicable regulations. In support of its position, Orion 3 offered the testimony of Sheila Hussein, which is summarized below.

Sheila Hussein

Ms. Hussein testified that she is the sole owner of Orion 3. She testified regarding communications that she has had with the protestants to this case. She indicated that she has met with the protestants in an effort to address their concerns about past problems at the bar. She assured them that she intended to correct such problems under her operation of the bar. One such correction would be that she will not allow dancing at the bar and does not intend to operate it as a dance hall. As a result of her meeting with the protestants, numerous parties withdrew their opposition to the permit requests. In particular, Dallas City Councilwoman Veletta Forsythe Lill withdrew her protest, and the Oak Lawn Committee chose not to participate in the protest hearing.

Ms. Hussein testified that Garry Lyon and Barry Lyon have withdrawn their interest in Orion 3 and are no longer partial owners in it. She further testified that she has no intention of associating

with them in regard to Orion 3 or the operation of the bar. Ms. Hussein indicated that the name of the bar would be changed at some point as well, from “Lime Bar” to “Chic Bar.”² Ms. Hussein admitted that she was an investor in Noor Brothers, but purchased her interest in December 2002, near the same time that Noor Brothers voluntarily surrendered its permits. Prior to that investment by her, she also served as a bookkeeper for the club beginning in August 2002.

D. ALJ’s Analysis

After considering the evidence, the ALJ concludes that there is no legitimate basis for denying the permits. As noted above, only one protesting party remains in this proceeding—Roswell. However, even Roswell is not alleging that the bar is necessarily inconsistent with the existing area. Nor is Roswell’s representative concerned with the proposed operation of the bar or its location, so long as the problems that existed under past management are not continued. If, in fact, there was a similarity of ownership, such concerns might be founded. But, as the evidence clearly indicates, there is no real similarity of ownership between the past owners, Noor Brothers, and the current applicant, Orion 3. Ms. Hussein, the sole owner of Orion 3, did acquire an ownership interest in Noor Brothers in December 2002, the same month Noor Brothers surrendered the permits for the club. However, there is no evidence that Ms. Hussein had any interest (other than working as a bookkeeper) in the club during the time that the club was regularly cited for violations and in which the noise and disturbance problems were occurring.

Further, the evidence establishes that Orion 3 intends to operate the bar very differently from past ownership. Ms. Hussein testified that dancing will not be allowed and the club has no intention of seeking a dance hall permit. Further, Ms. Hussein testified that she has plans to address the various problems raised by the protestants. Apparently her representations were sufficient to assuage the other protestants in this case and, based on Mr. Cheek’s statements at the hearing, also appeared to alleviate much of Roswell’s concern as well. Ultimately, Roswell simply has not presented any credible evidence why the establishment proposed by Orion 3 will present any harm or is somehow incompatible with the community’s morals and general welfare. Instead, Roswell has simply indicated that past ownership of the club managed it improperly and had a history of violations of laws and ordinances, and Roswell wants to ensure that such does not happen if Orion 3 operates the bar.

Under the circumstances, the ALJ concludes that such concerns are not sufficient to justify denial of the permits. Rather, as noted at the hearing, Roswell may challenge the renewal of the permits in a year if it believes that Orion 3 has operated the bar in such a way that is inconsistent with the general welfare, peace, morals, and safety of the people and with the public sense of decency. As it is now, the ALJ cannot conclude that the evidence supports a finding that the place or manner in which Orion 3 may conduct business warrants the refusal of a permit based on these factors, nor on the basis of any anticipated violation of the relevant noise regulations contained in Section 101.62 of the Code. For this reason, the ALJ recommends that the requested permits be issued.

² Although she indicated the name would be changed at some point, for purposes related to the application the club is referred to as the Lime Bar.

III. FINDINGS OF FACT

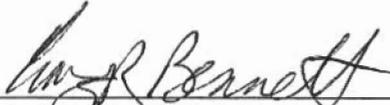
1. Orion 3 L.L.C. d/b/a Lime Bar (Orion 3) has applied to the Texas Alcoholic Beverage Commission (Commission) for a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit, and a Beverage Cartage Permit for a premises known as Lime Bar, located at 4006 Cedar Springs, Dallas, Dallas County, Texas.
2. A nightclub was operated at the same location (4006 Cedar Springs, Dallas, Texas) under the name Lime Bar for some years prior to the filing of the current permit requests. Most recently, the club had been operated by Noor Brothers Nightclub, Inc. (Noor Brothers).
3. During Noor Brothers' ownership, the Lime Bar was repeatedly cited by police for noise or disturbance violations and for operating a dance hall without a permit. Specifically, the club was issued citations on June 17, July 18, and August 11, 2002, for operating a dance hall without a permit.
4. During the operation by Noor Brothers, there were a total of 60 calls to the police between October 2000 and October 2002 in relation to the Lime Bar. The majority (31) of these calls related to noise or loud music complaints. The remaining calls related to a variety of complaints, involving burglar alarms, disturbances, or suspicious behavior.
5. In December 2002, Noor Brothers voluntarily surrendered its permits to operate the Lime Bar. At the time, Orion 3 had already filed its permit requests in anticipation of a change in ownership of the club.
6. Protests to the permit requests were filed by residents of the area where the Lime Bar is located.
7. On April 16, 2003, Commission Staff issued a notice of hearing notifying all parties that a hearing would be held on the permit requests and informing the parties of the time, place, and nature of the hearing.
8. The hearing was held on May 1, 2003, in Dallas, Dallas County, Texas, before Robert Jones, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). The hearing concluded that same day. The record closed on May 8, 2003, after the parties submitted additional evidence.
9. At the time that Orion 3 filed its applications, Garry Dean Lyon and Barry Gene Lyon were limited partners in it. Both previously worked for Noor Brothers at the Lime Bar.
10. At the time of hearing, Garry Dean Lyon and Barry Gene Lyon no longer had an interest in Orion 3.
11. Sheila Hussein is the sole owner of Orion 3.

12. Ms. Hussein did not have an ownership interest in the Lime Bar during the time in which it was cited for violations by the Dallas Police Department nor during which numerous service calls were made to the police regarding the bar.
13. Under the operation by Orion 3, dancing will not be allowed at the Lime Bar, and the club has no intention of seeking a dance hall permit.
14. There is insufficient evidence to show that the place or manner in which Orion 3 intends to conduct business is incompatible with the general welfare, peace, morals, safety of the people, and the public sense of decency.
15. There is insufficient evidence to establish that the place or manner in which Orion 3 intends to conduct business will result in the production, amplification, or projection of music or other sound that is loud, vociferous, vulgar, indecent, lewd, or otherwise offensive to persons on or near the licensed premises.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN., Chapters 1 and 5 and §§ 6.01 and 11.46.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Issuance of the requested permits will not adversely affect the safety of the public, the general welfare, peace, or morals of the people, nor violate the public sense of decency, as prohibited by TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).
5. Issuance of the requested permits is not anticipated to result in violation of the noise regulations found in TEX. ALCO. BEV. CODE ANN. §101.62.
6. The application of Orion 3 L.L.C. for a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit, and a Beverage Cartage Permit for a premises known as Lime Bar should be granted.

Signed this 16th day of June 2003.



CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 603715

IN RE ORION 3 L.L.C.	§	BEFORE THE
D/B/A LIMEBAR	§	
ORIGINAL APPLICATION MB, LB & PE	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-2823)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 11th day of July 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert Jones. The hearing convened on May 1, 2003, and adjourned on May 1, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 16, 2003. This Proposal For Decision (**attached hereto as Exhibit "A"**), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application for MB, LB and PE is hereby **GRANTED**.

This Order will become final and enforceable on July 21, 2003, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this 11th day of July, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Craig R. Bennett
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (512) 475-4994

Stephen F. Shaw
ATTORNEY FOR RESPONDENT
8700 N. Stemmons Frwy., Ste. 470
Dallas, TX 75247
VIA FAX (214) 920-2498

ORION 3 L.L.C.
D/B/A LIMEBAR
RESPONDENT
4006 Cedar Springs
Dallas, TX 75219
CERTIFIED MAIL/RRR NO. 7001 2510 0003 8686 9745

Veletta Forsythe Lill, City Councilwoman
City of Dallas
VIA FAX (214) 670-1847

PROTESTANTS:

Rosewil Court Neighborhood Assoc.
Attn: Steve Cheek
4011 Roswell Court
Dallas, TX 75219
VIA REGULAR MAIL

The Oak Lawn Committee
Attn: Michael Milliken
PO Box 190912
Dallas, TX 75219
VIA REGULAR MAIL

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

Dallas District Office